

No. 11820

IN THE

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant,

vs.

TAVARES CONSTRUCTION COMPANY, INC., a
corporation, CONCRETE SHIP CONSTRUCTORS,
a joint venture, STROUD-SEABROOK, a copartner-
ship, LLOYD S. STROUD, R. S. SEABROOK, C.
M. ELLIOTT, CARLOS TAVARES, HENRY M.
PAGE and DON F. GATES,

Appellees.

VOLUME V.

SUPPLEMENTAL TRANSCRIPT
OF RECORD

(Pages 1458 to 1466, Inclusive)

Upon Appeal From the District Court of the United States
for the Southern District of California
Southern Division

FILED

MAY 23 1940

PAUL F. O'BRIEN,

No. 11820

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FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant,

vs.

TAVARES CONSTRUCTION COMPANY, INC., a
corporation, CONCRETE SHIP CONSTRUCTORS,
a joint venture, STROUD-SEABROOK, a copartner-
ship, LLOYD S. STROUD, R. S. SEABROOK, C.
M. ELLIOTT, CARLOS TAVARES, HENRY M.
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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[Minutes: Tuesday December 2, 1947]

Present: The Honorable Paul J. McCormick, District Judge.

For hearing motion of defendants Tavares Construction Co., Inc., et al., to correct and modify record and judgment; C. U. Landrum, Esq., Spec. Asst. to Att'y General, present for Gov't; John M. Martin and Frank L. Martin, Esqs., present for moving defendants;

Attorney John Martin argues in support of motion and Attorney Landrum argues in reply and in opposition to motion. Court makes a statement and notes correction in transcript of Feb. 20, 1947 (page 435, line 3).

At 11:23 A. M. Attorney John Martin argues further in support of motion in closing. Court makes a statement and reads from transcripts and record.

Court gives oral opinion and enters order that certain words are hereby stricken from judgment upon verdict entered June 7, 1947, in accordance with said opinion.

Attorney Landrum excepts to Court's ruling.

Attorney John Martin moves that transcript be made of these proceedings embodying Court's ruling, to be included in record on appeal, without necessity of preparing written order thereon, and it is so ordered over the objection of Attorney Landrum. [1*]

1460 *Tavares Construction Company, Inc., et al.*

In the District Court of the United States
Southern District of California
Southern Division

No. 248-SD Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CERTAIN PARCELS OF LAND IN THE CITY OF
NATIONAL CITY, County of San Diego, State of
California; TAVARES CONSTRUCTION COM-
PANY, INC., etc., et al.,

Defendants.

NOTICE OF APPEAL

FROM ORDER OF COURT OF DECEMBER 2, 1947,
MADE UPON PROCEEDINGS BROUGHT TO
CORRECT AND MODIFY JUDGMENT AND
FROM ORDER OF COURT MODIFYING JUDG-
MENT.

Notice Is Hereby Given that plaintiff, United States of America, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the order of the United States District Court made and entered in the above entitled action on December 2, 1947, upon proceedings brought by defendants and appellants Tavares Construction Company, Inc., a corporation, Concrete Ship Constructors, a joint venture, Stroud-Seabrook, a copartnership, L. S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page and Don F. Gates, to correct and modify record and judgment, and from order of United States District Court of December 2, 1947, modifying the judgment theretofore made and entered herein.

Dated: March 1, 1948.

JAMES M. CARTER

United States Attorney

C. U. LANDRUM,

JOSEPH F. McPHERSON and

FRANCIS C. WHELAN

Special Assistants to the Attorney General

By Francis C. Whelan

Attorneys for Plaintiff

[Endorsed]: Filed; mld. copy to John M. Martin,
Atty. for Defts., Mar. 1, 1948. Edmund L. Smith,
Clerk. [2]

[Title of District Court and Cause]

CERTIFICATE OF CLERK TO SUPPLEMENTAL
RECORD

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 4, inclusive, contain full, true and correct copies of Minute Order Entered December 2, 1947; Notice of Appeal From Order of Court of December 2, 1947, made upon proceedings brought to correct and modify judgment and from order of court modifying judgment and Supplemental Designation of Plaintiff and Appellee and Cross-Appellant United States of America of Record on Appeal which constitute the supplemental transcript of record on appeals to the United States Circuit Court of Appeals for the Ninth Circuit.

1462 *Tavares Construction Company, Inc., et al.*

Witness my hand and the seal of said District Court
this 17 day of March, A. D. 1948.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy

[Endorsed]: No. 11820. United States Circuit Court
of Appeals for the Ninth Circuit. United States of
America, Appellant, vs. Tavares Construction Company,
Inc., a corporation, Concrete Ship Constructors, a joint
venture, Stroud-Seabrook, a copartnership, Lloyd S.
Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares,
Henry M. Page and Don F. Gates, Appellees. Supple-
mental Transcript of Record. Upon Appeal From the
District Court of the United States for the Southern
District of California, Southern Division.

Filed March 18, 1948.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit

United States Circuit Court of Appeals
Ninth Circuit

No. 11820 Civil

TAVARES CONSTRUCTION COMPANY, INC., a corporation, CONCRETE SHIP CONSTRUCTORS, a joint venture, STROUD-SEABROOK, a copartnership, L. S. STROUD, R. S. SEABROOK, C. M. ELLIOTT, CARLOS TAVARES, HENRY M. PAGE and DON F. GATES,

Appellants and Cross-Appellees,

vs.

UNITED STATES OF AMERICA,

Appellee and Cross-Appellant.

STIPULATION THAT APPEALS MAY BE CONSOLIDATED FOR PURPOSES OF RECORD, BRIEFING, HEARING AND SUBMISSION

It is hereby stipulated by and between appellants and cross-appellees Tavares Construction Company, Inc., a corporation, Concrete Ship Constructors, a joint venture, Stroud-Seabrook, a copartnership, L. S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page and Don F. Gates, appearing through their counsel of record, John M. Martin and Frank L. Martin, Jr., and appellee and cross-appellant, United States of America, appearing through its attorneys of record, James M. Carter, United States Attorney, C. U. Landrum, and Francis C. Whelan, Special Assistants to the Attorney General, that the Appeal of Tavares Construction Company, Inc., a corporation, Concrete Ship Constructors, a joint venture, Stroud-Seabrook, a copartnership, L. S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page

and Don F. Gates heretofore docketed in the above entitled Court as No. 11820, and the Cross-Appeal of appellee and cross-appellant, United States of America from the Order of Court of December 2, 1947, made upon proceedings brought to correct and modify Judgment, and from the Order of Court of December 2, 1947 modifying Judgment, notice of which said Cross-Appeal was filed in the office of the Clerk of the United States District Court in and for the Southern District of California, on March 1, 1948, and which said Cross-Appeal has heretofore been docketed in the above entitled Circuit Court of Appeals for the Ninth Circuit, may be consolidated for purposes of record on appeal, briefing purposes, hearing and submission.

Dated: This 6th day of April, 1948.

JAMES M. CARTER

United States Attorney

C. U. LANDRUM

FRANCIS C. WHELAN

Special Assistants to the Attorney General

By Francis C. Whelan

Attorneys for Appellee and Cross-Appellant, United States
of America

JOHN M. MARTIN and

FRANK L. MARTIN, JR.

By Frank L. Martin, Jr.

Attorneys for Appellants and Cross-Appellees Tavares
Construction Company, Inc., a corporation, Concrete
Ship Constructors, a joint venture, Stroud-Seabrook,
a copartnership, L. S. Stroud, R. S. Seabrook, C. M.
Elliott, Carlos Tavares, Henry M. Page and Don F.
Gates

Receipt of a copy of the foregoing Stipulation is hereby acknowledged on this 6th day of April, 1948. John M. Martin and Frank L. Martin, Jr., by Frank L. Martin, Jr., Attorneys for Appellants and Cross-Appellees Tavares Construction Company, Inc., a corporation, et al.

[Endorsed]: Filed April 7, 1948. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause]

ORDER CONSOLIDATING APPEALS FOR PURPOSES OF RECORD ON APPEAL, BRIEFING PURPOSES, HEARING AND SUBMISSION

Good cause therefor appear, It Is Ordered that the appeal of appellants and cross-appellees Tavares Construction Company, Inc., a corporation, Concrete Ship Constructors, a joint venture, Stroud-Seabrook, copartnership, L. S. Stroud, R. S. Seabrook, C. M. Elliott, Carlos Tavares, Henry M. Page and Don Gates, and the cross-appeal of appellee and cross-appellant United States of America be, and the same are, consolidated for purposes of record on appeal, briefing purposes, hearing and submission.

FRANCIS A. GARRECHT

Senior United States Circuit Judge

Dated: San Francisco, Calif., April 7, 1948.

[Endorsed]: Filed April 7, 1948. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause]

STATEMENT OF CROSS-APPELLANT UNITED
STATES OF AMERICA OF POINTS ON
WHICH IT INTENDS TO RELY ON CROSS-
APPEAL

Comes now Appellee and Cross-Appellant, United States of America, and pursuant to Rule 19 of the above entitled Court, states the points on which it intends to rely on its Cross-Appeal, as follows:

1. The District Court erred in making its order of December 2, 1947.
2. The District Court lacked jurisdiction to amend the Judgment entered June 6, 1947.
3. The District Court erred in concluding that the questions as to compensation for the option had not been considered or decided at the trial of the case.
4. The District Court erred in granting the motion of November 17, 1947, to correct and modify the record and Judgment.
5. The District Court erred in holding that the verdict did not include compensation for the option.

Dated: This 7th day of April, 1948.

A. DEVITT VANECH

Assistant Attorney General

JAMES M. CARTER

United States Attorney

FRANCIS C. WHELAN

C. U. LANDRUM

Special Assistants to the Attorney General

By Francis C. Whelan

Attorneys for Appellee and Cross-Appellant, United States
of America

[Endorsed]: Filed Apr. 9, 1948. Paul P. O'Brien,
Clerk.